

**BLM Presentation before the NAGPRA Review Committee  
May 9, 2012**

Good afternoon. Thank you for the opportunity to present to the Review Committee an update on the Bureau of Land Management's implementation of the Native American Graves Protection and Repatriation Act.

My name is Emily Palus, and I am the Deputy Division Chief for the Bureau of Land Management's Division of Cultural, Paleontological Resources, and Tribal Consultation in Washington, D.C.

With me representing the BLM is Mr. Jerry Cordova, Senior Tribal Coordinator with the BLM's Washington Office and Dr. Byron Loosle, Deputy Preservation Officer, State Archaeologist, and NAGPRA Coordinator for the BLM's Utah State Office.

Our presentation will consist of an overview of the BLM's NAGPRA work followed by a case study highlighting one of the BLM's cultural property projects involving coordination of law enforcement and the cultural program in addressing looting and trafficking of Native American human remains, NAGPRA cultural items, and other artifacts in the Four Corners Region.

*[Background on the BLM]*

The Bureau of Land Management is a multiple-use land management agency with the mission "to sustain the health, productivity, and diversity of America's public lands for the use and enjoyment of present and future generations." BLM is an agency within the U. S. Department of the Interior that was established in 1946, with the merging of the U.S. Grazing Service with the General Land Office (GLO). Mandated by the Federal Lands Policy Management Act of 1976 (FLPMA), the BLM must manage

resources on these public lands for a variety of uses, such as energy development, livestock grazing, recreation, and timber harvesting, while protecting a wide array of natural, cultural, and historical resources.

Today, the BLM manages 245 million acres, most of which are located in the 12 Western states and Alaska, and 700 million acres of sub-surface mineral estate throughout the nation. BLM is a tiered organization, with 12 state offices, under which there are 46 districts and 133 field offices.

#### *[BLM's NAGPRA Program]*

Implementation of NAGPRA within the BLM is assigned to the Cultural Resources Program, which includes management of the cultural and paleontological resources on the public lands, as well as the associated museum collections, records, and data, conformance with Section 106 of the National Historic Preservation Act, and oversight of the BLM's tribal relations. BLM consults with Indian tribes on a government-to-government basis on a whole host of issues and projects involving management of the public lands.

BLM's heritage resources include:

- 328,000 recorded cultural properties;
- 83 historic properties listed on the National Register and 38,000 properties eligible for listing;
- 63,000 monitored archaeological sites;
- 390 maintained historic structures; and
- 25,000 recorded paleontological localities.

However, only about nine percent of the 245 million surface acres of BLM public lands have been inventoried for cultural resources, so these figures will increase.

In addition to the resources on the lands, there are about 10 million documented artifacts and fossils recovered from BLM lands, and now located in 3 BLM facilities, four

other Federal facilities and 133 non-federal museums and universities.

At the policy level, implementation of NAGPRA is coordinated by the Washington Office, in Washington, DC, under the Assistant Director for Renewable Resources and Planning, in the Division of Cultural, Paleontological Resources, and Tribal Consultation. This is division for which Jerry and I work. In addressing NAGPRA, the National Curator and NAGPRA Coordinator, a position established in 1994, provides policy oversight, technical assistance and training to the BLM state and field offices. In addition to NAGPRA, this position provides bureau-wide coordination and technical assistance for archaeological, historical, and paleontological collections recovered from public lands, and housed in BLM and nonfederal repositories.

I served in this role from 2006 to 2010, before taking on the role of deputy division chief. Our most recent Curator recently left, and the position is vacant. Jerry Cordova is currently acting as the NAGPRA Coordinator.

The BLM's 12 State Directors are responsible for primary operational compliance for new discoveries of Native American human remains and cultural items found on lands currently under their jurisdiction (Section 3) and for collections of Native American human remains and cultural items removed from the public lands prior to 1990 when NAGPRA was enacted (Sections 5-7). Staff work is assigned to the 12 State Office Cultural Program Leads. In some circumstances, a cultural specialist in a district or field office may assume primary responsibility for a NAGPRA collections case. However, generally, district and field office specialists address NAGPRA compliance for "New Discoveries" prescribed in Section 3 of NAGPRA.

Compliance with NAGPRA is one of many duties assigned to BLM cultural specialists. These staff primarily review land-use proposals that may affect historic

properties in compliance with Section 106 of the National Historic Preservation Act (NHPA). The BLM processes more than 13,000 Section 106 actions per year. BLM issues approximately 500 cultural resource use permits annually, most, but not all, of which are for non-collection survey conducted by consultants to land-use proponents to conduct Section 106 compliance.

With an average ratio of 1.5 million acres of public land per cultural specialist, the focus of the BLM's management of cultural resources is directed toward Section 106 compliance review, on-the-ground inventory, monitoring, and stabilization of archaeological sites and historic properties. Most proactive cultural resource work is accomplished through cost-share partnerships with state, local, tribal, and non-profit organizations.

To enhance staff capacity to implement NAGPRA, the BLM integrated a NAGPRA training module into its cultural resource fundamentals curriculum in 2006. To further expand BLM staff's understanding of NAGPRA requirements, the BLM WO developed an in-house, one-day workshop in 2009 to improve understanding of key responsibilities and support effective decisions. Thus far, the workshop has been offered nine times in six BLM States, reaching 150 BLM managers, cultural specialists, rangers, and some partner repository personnel, and tribal representatives. Roll out of this training has actually increased the NAGPRA workload, as we have more staff engaged and addressing NAGPRA issues.

#### *Implementing the "New Discoveries" Requirements of NAGPRA, Section 3]*

In implementing NAGPRA, to address Section 3 "New Discoveries," the BLM has integrated the requirements of planning for intentional excavations and responding to

inadvertent discoveries in its land-use activities, including correlation with NHPA Section 106 review and notifications under the Archaeological Resources Protection Act (ARPA). BLM develops Plans of Action, including those that address small, discrete projects, as well as large scale landscape development projects, such as multi-state pipelines.

One of the interesting challenges in Section 3 New Discoveries are inadvertent discoveries made by the recreating public, as recreation increases and once remote places are more accessible. While NAGPRA requires that anyone that suspects they have encountered Native American human remains on Federal lands notify the Federal agency, this is not general knowledge, and if notifications are made, they are usually to the local sheriff or coroner, who may initiate actions under their authority, since the BLM has concurrent jurisdiction, meaning the Federal government shares law enforcement responsibilities with the state and the local officers. Once the local agency determines that the remains do not constitute a modern person or crime scene, they engage with the BLM, which can then initiate NAGPRA.

It is BLM's policy to leave burial sites and their contents undisturbed whenever possible. In fact, most new discoveries do not move past notification and initial consultation, as the BLM rather makes effort to "stabilize in place," rather than excavate or remove.

However, for Native American human remains and cultural items that were excavated or removed from BLM lands through April 2012, the BLM has published 34 Notices of Intended Disposition documenting the planned transfer of 182 sets of Native American human remains, 5,211 associated funerary objects, and 3 sacred objects.

*Implementing the “Collections” Requirements of NAGPRA, Sections 5-7*

Next, I'd like to talk about BLM's inventory and summary work implementing the Collections components of NAGPRA. Per the requirements of the Antiquities Act of 1906 and the Archaeological Resources Protection Act of 1979, collections made from the public lands were deposited in public museums, and today, most BLM collections are maintained in non-federal museums and universities. BLM works with these repositories, and in fact relies on them, because the museums have the collections documentation, physical access to the remains and objects, and intellectual and administrative information necessary for completing inventories and summaries.

When NAGPRA was enacted in 1990, the BLM mobilized to locate and document archaeological collections recovered from BLM and predecessor agency public lands. This process was challenging because the collections were dispersed in multiple museums and there was limited land jurisdiction information in museum records, which was further complicated by the changes in land status over time, as Federal lands were conveyed, transferred, and acquired.

The agency also faced limited access to records on collecting activities, because prior to 1984, permits for study and collection of archaeological resources under the Antiquities Act and ARPA were issued by the Department of the Interior or the National Park Service - not the BLM. The BLM has made great use of the DOI and NPS permit records to help identify potential collections. These records span 80 years, and are housed at the National Archives and Records Administration and the Smithsonian's National Anthropological Archives in Washington, DC.

To date, the BLM has completed inventories documenting 2,065 sets of Native American human remains and 19,840 associated funerary objects. These human

remains and cultural items were held in five BLM facilities and 36 non-Federal museums in 17 states.

Of the inventoried NAGPRA items, 1,584 sets of Native American human remains and 19,026 associated funerary objects have been culturally affiliated with present-day Indian tribes, with notification provided in 61 Notices of Inventory Completion published in the *Federal Register*. Fifty-five of the 61 notices were for collections in the possession of a museum, and in the control of the BLM.

Of the culturally affiliated NAGPRA items, 1,074 Native American human remains and 14,261 associated funerary objects have been claimed and repatriated. That is about 68% of the culturally affiliated human remains. The balance of human remains and funerary objects are available for repatriation upon a claim. For now, the BLM continues to maintain control of the collections, which remain curated by partner museums and universities.

The BLM also has inventoried 483 sets of human remains and 623 associated funerary objects determined to be culturally unidentifiable. This includes two sets of remains and 202 associated funerary objects that were subsequently affiliated with present-day Indian tribes and reported in a Notice of Inventory Completion. In addition, the BLM has published a Notice of Inventory Completion to transfer 10 sets of remains under 43 CFR 10.11, Disposition of Culturally Unidentifiable Human Remains.

Of the summaries provided to Indian tribes, 446 items have so far been identified as unassociated funerary objects, which have been culturally affiliated and published in three Notices of Intent to Repatriate.

BLM recognizes that inventory and summary work is ongoing. Thirteen of the 26 notices published over the last 6 years are for remains removed from BLM public lands

and in the possession of a museum that as of 2006 the BLM was not aware of them. As the BLM continues to work with museums to locate and document collections that originated from BLM public lands, the agency will complete summaries and inventories pursuant to the timelines established in 43 CFR 10.13, Future Applicability.

Briefly, to summarize some of the complexities in tracking down collections:

- Prior to promulgation of 36 CFR 79, Curation of Federally Owned and Administered Archaeological Collections, just a few months before NAGPRA in 1990, as long as collections were deposited in a public museum, as directed by the permit, the permit conditions were considered to have been met. There were no requirements or resources, for the agency to track, monitor, oversee, or otherwise coordinate with the museums regarding curation.
- Museums might be in possession of collections that were removed from public lands, but unaware of the Federal connection. Such collections include those that were not deposited in the museum identified in the permit, or were exchanged or transferred among museums.
- Collections also include those that were removed from public land without a permit and donated by private individuals or collected by researchers without authorization.
- Lastly, many museum documentation systems (paper and automated) do not identify the agency as the owner and do not have land jurisdiction identifiers in data systems, making it very difficult to identify Federal collections from museum records.

Tremendous effort is necessary to sort through collections, confirm land jurisdiction, in order to determine ownership and control. To illustrate – BLM Alaska, which as published a total of 22 Notices of Inventory Completion to date – has pursued



locating human remains and funerary objects collected by the same researcher from the same sites, that BLM has now located in institutions in Connecticut, Wisconsin, Alaska, and most recently Oregon.

The BLM anticipates continuing to complete new inventories and updated existing inventories to account for Native American human remains and cultural items newly discovered in collections, as we work with our partner museums and universities.

The Government Accountability Office Report on Federal Agency Compliance with NAGPRA provided opportunity for the agencies to submit a needs assessment documenting the tasks, schedules, and resources necessary to complete inventories and summaries of all NAGPRA collections. The BLM highlighted several proactive tasks to locate unknown and unreported collections, including:

- Review and update of previously completed inventories and summaries
- Inventory and certify the existence or absence of NAGPRA items in BLM facilities
- Resurvey museums with BLM collections for which no NAGPRA material was previously reported
- Survey museums to locate unreported collections in the control of the BLM
- Coordination with repositories to compile collections and catalog data
- Support tribal participation in consultation activities

Stepping up these activities will require the additional resources identified in the needs assessment.

*[Update from New Mexico]*

However, the BLM is addressing tasks within current capacity. For instance, since we are in Santa Fe, I'd like to share an update on BLM New Mexico's recent and ongoing NAGPRA work. Ms. Signa Larralde, Deputy Preservation Officer, State

Archaeologist, Tribal Liaison, and NAGPRA Coordinator for the BLM New Mexico regrets that she could not be here today. Signa shared the following:

- BLM New Mexico is revisiting original inventories and the notices of inventory completion that were published 2001. Additional review of collections shows that the minimum number of individuals needs to be updated, because additional collections have been found in museums or items acquired through law enforcement activities.
- No claims were made in response to the 2001 notices, and the BLM will be reinitiating consultation with the culturally affiliated tribes, with a goal toward resolution of these remains and to discern the tribes wishes regarding reburial or disposition of the remains. BLM created a NAGPRA map as part of a GIS project that shows the location of all sites from which the human remains documented in the inventories were excavated. They hope to use this GIS information to help in locating appropriate reburial locations.

*[Spirit Cave]*

I'd also like to share an update from BLM Nevada, and specifically touch on the status of the human remains and cultural items recovered from Spirit Cave, Nevada. At the present time, BLM has not yet resolved litigation that was filed against it by the Fallon Paiute-Shoshone Tribe over BLM's determination that the human remains found in Spirit Cave are not affiliated with any present day Native American tribe.

In response to the Committee's October 2011 request for an update, the BLM Nevada State Director sent a letter for your meeting last November. That letter summarizes the history to date and current status. Since the litigation has not yet been resolved, I am limited in these comments. However, I would note that following the

Court's 2006 ruling, the BLM began to respond immediately to the Court's direction.

BLM's ongoing efforts to comply with the Court's Order involve:

- internal review and consideration of existing and new information with legal guidance from the Solicitor's Office to address the deficiencies noted by the Court related to BLM's determination, and specifically to ensure all available evidence is reviewed and considered. For example, in 2008, BLM responded to the Tribe's request for an expanded consideration of the evidence by securing funding to support a fresh review by three new and objective specialists in the fields of archaeology, biological anthropology and cultural anthropology (to include traditional and ethnographic information). As part of the process, BLM also solicited any new information was solicited from the Tribes and other involved parties relating to a determination of cultural affiliation.

- The BLM presently is looking at the evidence to decide whether its original determination is or is not the most correct finding available.

- The BLM and Solicitor's Office are also reviewing the effect of the regulations regarding Disposition of Culturally Unidentifiable Human Remains on the Spirit Cave case.

In consideration of these ongoing processes and Solicitor review, the BLM cannot yet provide any definitive statement relating to the human remains and cultural items from Spirit Cave.

#### *[Enforcing Prohibition on Trafficking (Section 4)]*

The last component of the BLM's NAGPRA work that I'd like to cover is enforcement of Section 4, the Prohibition on Trafficking of Native American Human

Remains and Cultural Items. The BLM's Office of Law Enforcement and Security is dedicated to the preservation and protection of cultural and natural resources on the public lands. NAGPRA is one of many statutes enforced by the BLM. Most investigations involving Native American human remains and cultural items involve several statutes in addition to NAGPRA, including the Archaeological Resources Protection Act (16 USC 470(ee)), □Theft of Government Property (18 USC 641), Theft of Tribal Property (□18 USC 1163), □Depredation Against Federal Property (18 USC 1361), among others. These other statutes can apply to burial locations and archaeological sites, while Section 4 of NAGPRA is limited to trafficking activities. The BLM Cultural Resource Program provides support to law enforcement on investigations involving Native American human remains, cultural items, archaeological sites, artifacts, and other cultural resources.

Annually, the BLM pursues violations of laws protecting cultural resources. In recent years, the agency has pursued two large-scale, multi-year investigations, Operation Bring 'Em Back in Oregon, and Cerberus Action in the southwestern Four Corner region. These investigations have so far resulted in the conviction of 39 defendants and the recovery of hundreds of thousands of Native American artifacts. As the collections are released from Law Enforcement, inventory of the collections will be completed pursuant to the timelines established in 43 CFR 10.13, Future Applicability, or following procedures for New Discoveries in 43 CFR 10.3-7 if the materials were removed from the public lands after NAGPRA was enacted in 1990.

Byron is going to speak specifically on the Four Corners case in just a few minutes.

### [Reburial]

Finally, we need to mention reburial. Although not a component of NAGPRA, reburial is often a preferred activity following repatriation or transfer of custody. Prior to September 2006, BLM policy prohibited the reburial of Native American human remains and cultural items on the public lands. This policy position was due to the fluid nature of multiple-use parcels and the concern about future protection for reburied items and potential for disturbance due to land-use actions.

However, in 2006, BLM Leadership determined that careful selection of reburial locations could help overcome the prior concerns, and issued new policy that allows authorization of reburials on a case-by-case basis. Reburial is a discretionary authority, and due to the complexities and demands of multiple-use land management, considerations must be made regarding the selection of the site and future management needs. It is BLM's policy to rebury as close to the original location as possible, when possible. It is not always possible due to subsequent or planned development or high risk of natural or unauthorized human disturbance. BLM evaluates land selection and status, NEPA and NHPA requirements, tribal access, legal and physical protections, and budget concerns. The BLM policy requires that disposition has been concluded (meaning BLM has completed repatriation or transfer of custody) prior to reburial.

To date, the BLM has received eight requests to rebury Native American human remains and cultural items, all of which were approved and successfully concluded.

Also – BLM has reburied human remains that were from lands that have since become BLM lands. And, initial discussions are underway regarding reburial of remains

that the NMAI is repatriating that were collected from GLO lands in the 1880s before the Antiquities Act for which the BLM does not have control.

Following up on the discussion earlier- For the BLM it is not an issue of CUI, it is an issue of whether the remains were originally removed from BLM land. BLM is working on a reburial of culturally unidentifiable human remains in Wyoming.

Establishing cemeteries is not a use recognized in the FLPMA, the land management statute we operate under. The basis for reburial on BLM lands is that these ancestors were originally buried on agency lands. We are returning those individuals to those lands.

(There may be other options under the Recreation and Public Purposes Act – which allows for the transfer land to state, local governments, or non-profit organizations for public purposes.)

### *[Summary]*

The BLM's NAGPRA activities focus on integrating NAGPRA responsibilities for new discoveries in land-use activities, completing NAGPRA documentation on collections removed from the public lands and held in non-federal repositories as they are identified, and pursuing protection of NAGPRA cultural items through law enforcement activities.

BLM is also engagement with NAGPRA – beyond basic implementation of Sections 3 through 7. BLM staff have served on the NAGPRA Grants panel, given presentations for the Federal NAGPRA Coordinators Group, the NAGPRA at 20 Conference, and at national and regional conferences, assisted other agencies in their

compliance efforts, including providing training, and served on National NAGPRA rulemaking committees.

BLM maintains a modest, but dedicated NAGPRA effort.

NAGPRA requires thoughtful and respectful consultation and documentation to identify Native American human remains and cultural items and determine cultural affiliation, leading toward repatriation or transfer of custody. NAGPRA is both bureaucratic and personal. So often, we list the statistics, use acronyms, and discuss compliance. But, as we all know, NAGPRA is extremely personal, difficult, and time-consuming as we navigate the legal requirements to resolve cases. There are complex, and sometimes convoluted, stories behind each NAGPRA case. These stories are journeys. I am very grateful that Byron Loosle could be here today, and share with you a case study of an ongoing BLM project – that has a distinct NAGPRA nexus, BLM's investigation into the looting and trafficking in cultural property, including Native American human remains and cultural items, in the Four Corners Region.

Byron –